

AMERICAN FUNDS DISTRIBUTORS, INC.

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August 25, 1989

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street NW
Washington, D.C. 20540

ICA-40
Section 24(b)
Rule
Public Availability 10/16/89

Re: Sections 5(b) and 10(a) of the Securities Act of 1933 (the "1933 Act"), Rules 134 and 482 under the 1933 Act, Section 24(b) of the Investment Company Act of 1940 (the "1940 Act"), and Rule 24b-3 under the 1940 Act

Gentlemen:

American Funds Distributors, Inc. ("AFD"), principal underwriter for 22 investment companies collectively known as The American Funds Group (the "Funds"), is writing to confirm that the staff of the Division of Investment Management (the "staff") will not recommend to the Securities and Exchange Commission (the "Commission") that the Commission take any enforcement action if AFD uses certain sales literature and advertisements written in languages other than English ("non-English sales materials") as described below. AFD believes that this request is consistent with the literal terms of the relevant statutes and rules.

1. Facts

Persons who use English as a second language or do not use English at all represent a significant percentage of the U.S. population.¹ Accordingly, it is often difficult to communicate effectively with such individuals regarding the Funds with

¹ According to the 1980 census, 23 million U.S. residents, or roughly 10% of the nation's population, spoke a language other than English in their homes. In Los Angeles, where AFD has its principal office, according to a report published in The Wall Street Journal, by 1992 two of every three students enrolled in the public school system will come from a family where a language other than English is spoken. The Los Angeles public school student population embraces more than 80 languages and comes from such diverse places as Madagascar, Macao, and Mexico. It would not be economically feasible to reach such disparate groups if it were necessary to translate Fund prospectuses.

English-language advertisements or sales literature. Of course, non-English speaking individuals living in the U.S. are accustomed to conducting business dealings in English, but are naturally more comfortable with their native language and are more likely to respond to material written in their native language. Therefore, AFD is considering developing non-English sales materials for use in the U.S.

Non-English sales materials distributed to the public would either be preceded or accompanied by current prospectuses for the Funds being offered pursuant to Sections 5(b) and 10(a) of the 1933 Act, or qualify as "tombstones" pursuant to Rule 134 under the 1933 Act, or qualify as "omitting prospectuses" pursuant to Rule 482 under the 1933 Act. Only English-language prospectuses would be available in connection with non-English sales materials. Each piece of non-English sales material would bear a prominent legend to the effect that the prospectuses for the Funds being offered are available only in the English language and potential investors should not invest or send money without understanding the content of the prospectuses.

Additionally, non-English sales materials would also conform to all applicable requirements including the antifraud provisions of Rule 156 under the 1933 Act.

Potential investors receiving non-English sales materials who might not understand an English-language prospectus would be further protected by the fact that shares of the Funds are sold through securities dealers who are subject to numerous requirements related to investor protection including Article III, Section 2 of the National Association of Securities Dealers' Rules of Fair Practice which states in pertinent part that "[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for the customer..." (Emphasis supplied.)

2. Discussion

a. Non-English Sales Materials Accompanied or Preceded by a Prospectus

AFD requests confirmation that the staff would not recommend that the Commission take action if an English-language prospectus of a Fund were delivered to potential investors pursuant to Sections 5(b) and 10(a) of the 1933 Act along with non-English sales materials for that Fund.

The staff has confirmed to the Franklin Group of Funds that it would take a no-action position (under Section 24(b) of the 1940 Act, see below) with respect to audio-taped sales material intended for distribution (along with a written prospectus) to blind and visually impaired persons provided "(1) the Materials, given the audience to whom the Materials are presented provide an accurate representation of the products being offered by Franklin, i.e., the Materials are not misleading; and (2) the Materials with respect to whether their presentation may or may not be misleading, are presented in accordance with the principles set forth in Rule 156 under the 1933 Act." See, Franklin Group of Funds, SEC No-Action Letter (available February 26, 1987) (the "Franklin letter").

AFD believes that delivering, for example, Chinese-language sales literature along with an English-language prospectus to native Chinese-language speakers is analogous to delivering audio-taped sales literature along with a written prospectus to blind and visually impaired individuals. Further, the foreign population has daily exposure to written English and must conduct its business in that language (even if they do not read it fluently). Of course, as discussed above, AFD intends to adhere to the conditions contained in the Franklin letter.

b. Non-English Sales Materials Used Pursuant to Rules 134 and 482

AFD also requests confirmation that the staff would not recommend that the Commission take action if non-English sales materials for a Fund were delivered to investors pursuant to either Rule 134 or Rule 482, when only an English-language prospectus for that fund would be available to such investors.

Although the Franklin letter only dealt with sales material accompanied by a prospectus, the staff's position should apply equally to materials used pursuant to Rules 134 and 482 since materials qualified under those rules are designed to offer the (English-language) prospectus.

c. Non-English Sales Materials Filed Pursuant to Section 24(b) and Rule 24b-3

AFD requests confirmation that the staff would not recommend that the Commission take action if non-English sales materials used with English-language prospectuses are filed pursuant to Section 24(b) of the 1940 Act and Rule 24b-3 thereunder.

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The staff in the Franklin letter took a no-action position with respect to the filing of audio-taped material to be used with blind and visually impaired individuals pursuant to Section 24(b) of the 1940 Act. As discussed above, we believe the issue presented in this letter is analogous to the issue presented in the Franklin letter.

We respectfully request, based on the facts and representations contained in this letter, that the staff provide confirmation that it will not recommend that the Commission take action, as requested. Please call the undersigned direct at 213/486-9425 if you need further information or have any questions.

Very truly yours,

Michael Downer

Michael J. Downer

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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 89-527-CC
American Funds
Distributors, Inc.
File No. 132-3

Your letter of August 25, 1989, requests our assurance that we would not recommend that the Commission take any enforcement action against American Fund Distributors, Inc. ("AFD"), the principal underwriter for The American Funds Group ("Funds"), if AFD distributes non-English language sales materials in the U.S. (1) that are accompanied or preceded by an English language prospectus in accordance with Sections 5(b) and 10(a) of the Securities Act of 1933 ("1933 Act"); and (2) under Rule 134 or 482 of the 1933 Act when only an English language prospectus is available. You also seek our confirmation that we would not recommend enforcement action if non-English language sales materials used with English language prospectuses are filed under Section 24(b) of the Investment Company Act of 1940 ("1940 Act") and Rule 24b-3 thereunder.

You state that persons who use English as a second language or do not use English at all represent a significant percentage of the U.S. population and it is therefore difficult to communicate effectively with such individuals regarding the Funds when distributing English language advertisements or sales literature. Further, you state that non-English speaking individuals living in the U.S. are more likely to respond to material written in their native language. In order to effectively communicate with these individuals, you propose to include a legend on each piece of non-English language sales material indicating that prospectuses for the Funds are available only in English and potential investors should not invest or send money without understanding the content of the prospectus. You believe that your request is analogous to the no-action request made by the Franklin Group of Funds (pub. avail. Feb. 26, 1987) (the "Franklin letter") in which the staff granted no-action relief. ^{1/} However, we are unwilling to extend the position taken in the Franklin letter to AFD's distribution of non-English sales literature and advertisements. We believe

^{1/} In the Franklin letter the staff stated that it would not recommend any enforcement action to the Commission under Section 24(b) of the 1940 Act if the Franklin Group of Funds filed three copies of a transcript of audio taped advertising materials to be used by the funds in connection with the sale of fund shares to blind and visually-impaired persons. Franklin stated that it would supply a prospectus that would either precede or accompany the sales materials. The sales materials were to include a statement disclosing the availability of a prospectus and a statement advising prospective investors to review the prospectus carefully before investing. The staff is currently reconsidering its position in the Franklin letter.

that if AFD distributes sales literature, or advertisements, in a language other than English, a prospectus in the same language should be readily available. 2/ For the reasons stated above, we are unable to assure you that we would not recommend that the Commission take any enforcement action if AFD proceeds as described in your letter.

Carol A. Peebles

Carol A. Peebles
Attorney

2/ For example, if AFD distributes sales literature in a language other than English and an English language prospectus either precedes or accompanies such sales literature, the sales literature should state that (1) a prospectus in the same language is available upon request, and (2) prospective investors should review a prospectus carefully before investing.

We believe our position is not inconsistent with Investment Company Act Rel. No. 6082 (June 23, 1970) (discussing the applicability of the federal securities laws to the offer and sale of open-end investment company shares outside the U.S.) in which the Commission stated that a "prospectus used in any foreign country should be printed in a language readily understood by that segment of the foreign public being solicited, which may or may not be the native language of the country." While AFD is not distributing prospectuses in a foreign country, it proposes to solicit a segment of the public whose native language may not be English.